

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

CYC, INC.,	:	APPEAL NO. C-090359
		TRIAL NO. 07CV-34128
Plaintiff-Appellant	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
MARK LOMACK,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

In four assignments of error, plaintiff-appellant CYC, Inc., (“CYC”) appeals the trial court’s judgment in favor of defendant-appellee Mark Lomack. Because CYC has failed to properly transmit to this court an official transcript of the trial court’s proceedings, we must presume the regularity of the proceedings and affirm.

The duty to provide a transcript for appellate review falls upon the appellant, and the appellant bears the burden of showing error by reference to matters in the record.² In this case, CYC indicated on its civil docket statement that it would not order a transcript for review on appeal. On the same document, however, CYC obtained a court reporter’s certification providing that a transcript of the proceedings would be filed on or before June 20, 2009, “contingent on payment.” By June 20, no

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² *Knapp v. Edwards Laboratories*, (1980), 61 Ohio St.2d 197, 199, 400 N.E.2d 384; see, also, App.R. 9 and 16.

transcript had been filed. On July 6, 2009, this court put on an entry stating that the record was complete “excluding transcripts,” and notice was mailed to appellate counsel the following day. CYC filed its brief in November 2009. In December 2009, without leave of court, a transcript of the proceedings was filed with the clerk of courts. The transcript lacked a court reporter’s certification.³

Because CYC filed an untimely and uncertified copy of the transcript of the proceedings, we can not consider it on appeal.⁴ And resolution on the merits of each of CYC’s assignments of error would require us to review the trial court’s proceedings. Since we must presume the regularity of the proceedings under these circumstances,⁵ CYC’s four assignments of error are overruled. The trial court’s judgment is affirmed.

SUNDERMANN, P.J., HENDON and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on May 12, 2010

per order of the Court _____.
Presiding Judge

³ See App.R. 9(B).

⁴ Cf. *In re Spencer*, 1st Dist. No. C-070321, 2008-Ohio-2844, ¶11.

⁵ *Knapp*, supra; *Ostrander v. Parker-Fallis Insulation Co.* (1972), 29 Ohio St.2d 72, 278 N.E.2d 363; *Farmers Production Credit Assn. of Ashland v. Stoll* (1987), 37 Ohio App.3d 76, 523 N.E.2d 899.